CALAMOS INVESTMENTS

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August 16, 2022

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Investment Company Names (File No. S7-16-22)

Dear Ms. Countryman:

Calamos Investments LLC ("Calamos") is pleased to have the opportunity to comment on the U.S. Securities and Exchange Commission's (the "Commission") proposal to amend Rule 35d-1 (the "Names Rule")[1] under the Investment Company Act of 1940, as amended (the "1940 Act") related to investment company names. We believe that Calamos can provide particularly useful insight into certain implications of the proposed amendments to the Names Rule to the fund industry particularly with respect to the use of synthetic instruments such as synthetic convertible securities.

Serving the needs of institutional and individual investors since 1977 through its operating subsidiaries, Calamos is a global investment firm committed to excellence in investment management and client services. With over $39 billion in assets under management[2], Calamos has particular experience with investment strategies involving growth strategies and investments in convertible securities. Calamos' subsidiary, Calamos Advisors LLC, is the investment adviser to seven closed-end investment companies with over $8.3 billion of assets under management[3] and 21 series of two open-end management investment companies.

Calamos generally supports the views of the Investment Company Institute's (the "ICI") comment on the proposed amendments to the Names Rule. However, there are a number of points raised in the ICI response that we believe deserve amplification, and we have some additional points outside of the ICI letter that we wish to raise for the Commission's consideration.

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1 *See* Investment Company Names, SEC Release No. IC-34593 (May 25, 2022), available at https://www.sec.gov/rules/proposed/2022/ic-34593.pdf (the "Release").

2 AUM as of 31st July 2022.

3 Id.

1. The Scope of the Revised Names Rule

We agree with the ICI's recommendations and conclusions related to the need to address the uncertainty that would be created if the scope of the Names Rule is expanded to include names that suggest a focus "in investments that have, or investments whose issuers have, *particular characteristics*." The ICI correctly notes, as established in the Commission's 2001 adopting release,[4] the Names Rule created an objective and quantifiable framework that sufficiently ensures a fund's portfolio represents the types of investments indicated by its name, in compliance with Section 35(d) of the 1940 Act, which prohibits funds from using names that are materially deceptive or misleading. We believe that the rule as presently constructed provides an intuitive, easily applied test regarding names for which no reasonable investor could disagree. This interpretive approach appropriately reflects Congressional intent to ensure that investors' assets in funds are invested in accordance with their reasonable expectations based on a fund's name, in addition to related prospectus disclosure.

We share the concern of the ICI and other commentators that the proposed amendments, as presently constituted, would greatly expand the terms implicated by the Names Rule to terms that are inherently subjective and may represent investment strategies instead of types of securities, or terms that do not have universally accepted definitions and could have multiple context-dependent meanings. We agree with the ICI that best way to address the weaknesses in the proposed rule would be to maintain the existing scope of the Names Rule and require additional prospectus disclosure to provide context about how a fund's name relates to its intended investment strategy. We also agree with their proposed alternative should the Commission be unwilling to take this approach: (i) more narrowly tailor the proposed expanded coverage of terms that "suggest an investment focus" to exclude terms that reasonably may be defined subjectively, lack measurable characteristics, and for which evaluations, opinions and views reasonably may vary; and (ii) recognize that certain terms may refer either to characteristics of a fund's individual investments or to the intended result of the portfolio as a whole and, accordingly, not categorically include such terms in the scope of the 80% investment requirement.

We also share the ICI's concern that if the amendments are adopted as proposed, they would raise considerable interpretive issues with respect both to: (i) whether a particular term suggests a focus on investments with particular characteristics; and (ii) where a fund has adopted an 80% investment policy tied to particular characteristics, whether a given investment is consistent with that policy. The Commission originally determined that terms such as "growth," "value" and "global" should not be subject to the rule, indicating by implication that they were not readily reducible to quantitative, asset-based tests, and were properly excluded from such prophylactic limitations.[5] For over 20 years, funds have utilized these terms in their names and have provided

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[4] *See* Investment Company Names, SEC Release No. IC-24828 (Jan. 17, 2001), available at https://www.sec.gov/rules/final/ic-24828 htm.

[5] *See id*. (stating" Rule 35d-1, as adopted, does not codify positions of the Division of Investment Management [(the 'Division')] with respect to investment company names including the terms 'balanced,' 'index,' 'small, mid, or large capitalization,' 'international,' and 'global.' In addition, the rule does not apply to fund names that incorporate terms such as 'growth' and 'value' that connote types of investment strategies as opposed to types of investments…. In determining whether a particular name is misleading, the Division will consider whether the

appropriate prospectus disclosure describing the investment strategies of the funds. For over 20 years, investors have had no apparent issue with understanding the investment scope of such funds. And for over 20 years, there has been no quantifiable indication that this approach is in any way broken, insufficient, or even in need of marginal improvement. It remains unclear, why the Commission is seeking to define terms that appear to defy universal definition and whether such universal definitions can be agreed upon or achieved.

2. Concerns with Definitions, Plain English and Established Industry Use

Under the terms of the proposed rule, and a companion set of changes to the disclosure rules, each fund that includes terms in its name that invoke application of the Names Rule, as amended, will be required to define such terms, including the criteria used to select the investments that the term describes. Funds would have freedom to define the terms, however, any such definition would need to be "consistent with those terms' plain English meaning or established industry use." Even with these limitations, we anticipate that in the absence of universally understood terms (such as are currently in place under Rule 35d-1) investors would need to carefully read the prospectus to fully understand how these terms are defined. Once the investor has read enough of the prospectus to understand how terms are defined, they have already done the hard work of investing, and the marginal benefits the Commission has identified related to including terms such as "growth," "value," or "global" in the Names Rule appear to be greatly diminished.

We also believe there are serious concerns with the requirement that terms be consistent with their plain English meaning or established industry use. While on its face an elegant concept designed to prevent avoidance, the provision quickly yields a morass of difficult and – to date – unsolved questions. Who will be the arbiter of plain English? A dictionary? (If so, which one?) The Staff? (If so, on what basis?) Determining established industry usage is even more difficult. What suffices to be "established"? Is "established" based on the passage of time, widespread adoption, or both? When is usage sufficiently established, and which industry establishes it? For example, are technical terms such as "blockchain" or "metaverse" determined by the technology industry, or the investment industry?[6] And who will be the arbiter of this determination, and on what basis?) What if established industry usage changes over time? Can that create a violation where one did not previously exist? Would presence in SEC filings determine established industry usage? If so, this could potentially yield a significantly negative outcome, as that approach would likely create survivorship bias resulting from definitions being taken up under the shadow of the threat of a refusal to accelerate or through a threat of a stop order. And this survivorship bias could potentially lead to a homogenization of existing and future funds looking to use particular names. This would significantly limit investment flexibility and, as a result, reduce product differentiation which would ultimately harm investors by decreasing their investment options. Further, this would expose funds and their investment managers to uncertain compliance risks should their chosen definition and criteria not meet the subjective determination of a plain English meaning or

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name would lead a reasonable investor to conclude that the company invests in a manner that is inconsistent with the company's intended investments or the risks of those investments.")

[6] Or worse, how does one determine whether a security is sufficiently "blockchain" or "metaverse"? If the fund provides a definition, will that be challenged by the staff as being either not plain English or established industry use?

established industry use. We believe, to the extent the Commission retains the plain English or established industry use tests, that it would be helpful for the Commission to address the parameters and application of those tests in greater detail in the adopting release so that industry participants fairly understand their intended application.

3. Effect on Existing Funds

Should the proposed amendments be adopted as currently drafted, all pre-exiting funds newly subject to the revised rule (such as growth funds) will face a binary decision: abandon existing, well-established names with potentially decades of good will and investor awareness or comply with the revised names rule and a newly applied 80% test. This latter option may require certain funds to change their investment objectives and strategies depending on how similar their existing definitions and criteria for use of certain names is with newly determined "established" industry usage. Any such changes could have unanticipated effects on the ability to show past performance without additional, potentially significant disclosure. In light of these concerns, we suggest the Commission retain the rule's current scope, or consider whether grandfathering existing funds is appropriate.

4. Synthetic Convertible Securities

Calamos has significant experience with convertible securities. We urge the Commission to clarify its stance on "synthetic instruments" to ensure that synthetic convertible securities would be treated appropriately under the revised rule. The Commission notes that the current iteration of the Names Rule and the proposed revised rule would allow "synthetic instruments" that have economic characteristics similar to the securities that must comprise the 80% basket. The focus on the term "instrument" – in the singular – raises the risk that synthetic convertibles would (a) be mischaracterized for purposes of the rule, and (b) be misvalued.

A convertible security is a hybrid instrument in that it comprises a debt or preferred stock interest with an embedded option on the security into which it may be converted. [7] A synthetic convertible security is typically not a single, specific type of instrument; rather, it is a debt or preferred security held in tandem with an option. [8] For example, the investor purchases and holds debt securities, which function like the bond portion of a convertible security, and contemporaneously purchases an instrument that gives equity exposure, which replicates the embedded option feature of a

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[7] Convertible securities include any corporate debt security or preferred stock that may be converted into underlying shares of common stock. Convertible securities entitle the holder to receive interest payments paid on corporate debt securities or the dividend preference on a preferred stock until such time as the convertible security matures or is redeemed or until the holder elects to exercise the conversion privilege.

[8] Under certain circumstances, third-party brokers might create structured securities that package aspects of different securities into a single instrument, or which take the form of a structured note. In most instances, however, the phrase "synthetic convertible" refers to holdings of various component securities in a portfolio that, in the aggregate, provide the portfolio with a convertible security's economic profile rather than referencing a single type of instrument.

convertible security.[9] By utilizing a synthetic convertible strategy, an investor is essentially seeking to replicate the economic characteristics of a convertible security: the base-line investment return and protection that investment exposure to debt securities can provide, coupled with the potential additional return that optional exposure to equities can provide.

The Commission's focus on "synthetic instruments" – again in the singular – creates a risk that synthetic convertible securities should not count towards the names rule. Debt securities standing on their own, and options standing on their own, do not have the economic characteristics of convertible securities. But if viewed together as a single "instrument" they do. We urge the Commission to clarify that a "synthetic instrument" is not just a single instrument but can also encompass multiple instruments when held together to replicate an investment indicated by the fund's name.

Additionally, we question whether valuing the option half of a synthetic convertible would be the most appropriate treatment for purposes of the names rule. Unlike other contexts, options held in a synthetic convertible are not intended to provide the fund with the notional exposure of the option, but rather are intended to provide the option value of the convertible security's embedded option. As a result, we are concerned that valuing the option leg of a synthetic convertible at the notional value could grossly overstate the value of the synthetic convertible for Names Rule purposes. We suggest amending the provision on derivative valuation to make clear that the options portion of a synthetic convertible may be valued in accordance its option value as opposed to its notional exposure, which we think would provide greater accuracy as to the amount of the fund investment in convertibles or their economic equivalent.

5. Temporary Deviations from the 80% Test

Finally, we strongly urge the Commission to reconsider the provisions of proposed Rule 35d-1(b)(1) regarding temporary investments below 80%. Congress has consistently recognized that forced divestiture by an investment company to come into compliance with provisions of the 1940 Act does harm to shareholders and should not be the answer. Congress did not require divestiture by a diversified fund that loses that status due to market fluctuations, Congress did not mandate divestitures if a fund exceeded the Section 12(d)(1)(A) percentage limits due to market appreciation, and a failure to meet asset coverage requirements under Section 18 does not require fire sales. Congress has authorized the Commission under Section 35(d) to define names that are materially deceptive or misleading; it did not provide the Commission with a mandate to require a fund and its investment adviser divest securities in a way that may potentially harm investors. We have significant concerns that under an extreme market decline, the provisions as proposed could cause forced sales in order to come back into compliance with the Names Rule. This could force a fund to realize losses on a fund that might otherwise be able to recover, causing realized losses for its investors. We urge the Commission to retain Rule 35(d)(1)'s current mechanism that uses an incurrence test and then requires a Fund's future investments to

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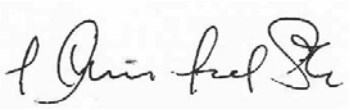
[9] John P. Calamos, CONVERTIBLE SECURITIES: THE LATEST INSTRUMENTS, PORTFOLIO STRATEGIES, AND VALUATION ANALYSIS 108 (rev. ed. 1998). The debt portion of the synthetic convertible and the option portion may be related to the same issuer, but typically are not.

be made in a manner that will bring the Fund into compliance with the 80% test while being protective of shareholders.

Calamos Investments appreciates the opportunity to comment on this rulemaking. We would welcome the opportunity to further discuss our views with you. Please feel free to contact the undersigned at [redacted] if you should like to do so.

Very truly yours,



J. Christopher Jackson
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cc: The Honorable Gary Gensler
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The Honorable Jaime Lizárraga
The Honorable Hester M. Peirce
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